The state as Kolonialware: on virtue, commodification, and the political economy of international law

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The pandemic strains supply chains. Lockdowns and border closures, quarantines and bankruptcies slow down the global circulation of goods. And some goods never arrive. Last summer, Sundhya Pahuja also ran into delivery problems. For a theme issue of Zeitschrift für Ideengeschichte, the German journal on the history of ideas, dedicated to Kolonialwaren *(colonial goods), the Australian international lawyer had promised a piece, written jointly with Jeremy Baskin, about a particular colonial commodity and its complex economic and cultural contexts.*

Kolonialwaren have their firm place in the drawers of Germany's memories. For decades, the Kolonialwarenladen *(colonial goods store) was part of the urban landscapes of German cities, until it was displaced by supermarket chains in the 1970s. Exquisite and everyday goods, cocoa, tobacco, spices and sugar were sold here, and later all kinds of other everyday commodities. A very German, but also thoroughly global* lieu de mémoire *of the colonial that post-colonialism never reached. A place to engage with materialities and political economies of the colonial, continued in oppressive global inequalities now brought into even sharper relief in times of the pandemic.*

In Australia, the crisis of university system triggered by the pandemic also led to fundamental restructurings at the University of Melbourne, where Pahuja teaches international law. Last autumn, there was no time for quiet reflection on colonial commodities and their intricate migration routes. But on a Tuesday in October, we re-established the supply chain and spoke with Sundhya Pahuja about the situation of academia on the other side of the world, about her research and her methods. And, of course, about Kolonialwaren.

In the global academic market, scholarship has long been a commodity, and if we think of the concept of the "neoliberal university", the University of Melbourne has been at the forefront of the economisation of research and teaching in recent years. How has the pandemic affected everyday life and institutional structures there?

The pandemic has led to a financial crisis of the Australian university system, caused by dependence on students from overseas. In the last decade there has been a kind of "unholy alliance" between conservatives and progressives: Universities were not adequately funded by the public purse, and in addition to their function as a place of education for Australians, an almost completely unregulated market for education

was created, which was sold to international students. This went so far that in the end almost half of the students were international students, who paid much higher fees than locals in most courses of study. At the same time, there was a hyper-casualisation of the academic workforce, a considerable increase in precarious employment relationships, especially in teaching. When the influx of money from overseas dried up, almost all casual workers were laid off.

The doubly problematic situation of a marketised academic system with a high number of casual workers, which in the pandemic collapsed, is a result of what can be called the “neoliberalisation of the university”. We actually see here an interesting example of transformations from colonial to postcolonial forms. One of the narratives we cultivated involved nostalgia for what the philosopher Raimond Gaita calls the “unworldly university” – a university that does not allow itself to be pressured by the demands of the market, that opens up space for reflection, that is oriented towards the humanities and that cultivates the liberal arts. This nostalgic longing is particularly interesting against the background of the history of Australian universities. They were founded when Australia was still a colony – to educate professionals, with a strong vocational orientation. So there was a colonial form of training technocrats to administer a colony, and this form was transformed for a brief moment in the 1970s into something that held an inherent democratic promise. When tuition fees were abolished in 1974 by a leftist government led by Gough Whitlam, there was a brief moment of democratic enthusiasm, with many people being the first in their family to attend university. Study remained free until 1988, when – interestingly – a Labour government introduced fees, but they were quite moderate. The system was also designed as a model of deferred debt, with repayment post-graduation based on income levels.

Thus, a transformation can be observed here: the migration of the colonial form through what in some rich countries in the 1970s and 1980s increasingly proved to be an atypical moment of democratic promise, up to the neoliberal forms of the 1990s and 2000s. During those decades, university governance was become more corporatised, and efficiency was becoming the mantra, but in order to function, this neoliberalising university depended on the idea of the “unworldly university” – and on the fact that this idea was held up by most of its employees. Even as the functional logics were increasingly determined by the market, we who worked there clung to the idea of a university committed to the common good, detached from the world and profoundly contemplative. It was this paradox, this myth, that ensured the functioning of the university. Through their own work, the employees subsidised the university – but when this work had to be monetised, the system could no longer be sustained.

But one could also say that this myth has become part of the Australian university’s own marketing strategy – a *marketable good*. As a colonial education system, the Australian academic system, as we have seen, was a system in which the best people went from the periphery to the metropolis and completed their graduate education, their doctoral studies in Great Britain, and later also in the USA. In the past decade, this dynamic has been reversed in some areas: in our field, for example, law, many of the best people from

Europe and the US went to Melbourne, as visiting researchers or doctoral students – because Melbourne promised this myth of the research-based, free and intellectually stimulating university. So, the paradox has become part of Australia's success on the global academic market.

The sad irony of this – as far as our research profile is concerned – "golden age" of Australian universities is a dirty secret, a dirty secret that we – I – should have been much more aware of, even if it does not affect the law school as much as the university as a whole: our research excellence was funded by overseas students who paid six-figure sums for their degrees, through highly efficient marketing structures and the exploitation of teachers in precarious employment. While we were swanning around and making a name for ourselves in international law, the money for this was generated by rather problematic processes. That created a surreal stratification even in the academic sector between those who are fancy professors and those who are casual teachers.

Will this change now?

There are many in the University who want to return things to the way they were as quickly as possible: open borders for international students, a funding model that is essentially the same as it was before. Government funding is hardly to be expected, and the university system does not matter to most voters. When, at the beginning of the pandemic, wage subsidies were offered to all businesses in the country at a very generous level, universities were explicitly excluded. They could not access a single cent; more money was earmarked for casinos than universities. For now, it is hard to see without the reconceptualisation of a smaller university, what will happen to research in Australia in the future.

Melbourne is part of the Pacific region, with most of the overseas students so far coming from China and India. Looking at the geopolitical dynamics – can we expect a considerable influx of students from these countries again once the pandemic is over or at least becomes more manageable?

The vast majority of our overseas students are coming from China. That's not necessarily the case for every university in Australia, but certainly at Melbourne, and so there was always the possibility that there would be a "geopolitical interruption" to the flow of students. And many people say that the strong dependence on China has created a chilling effect, which limits research and open discussion. This is why we are now urging our university management to think anew and differently about the composition of our student body; to see it not just as a source of money or monetary resources, but to consider what kind of mix of local and international students we want – so that we can reorient ourselves with intellectually credible goals.

Is this perhaps even a kind of re-positioning of the university, by which the university system is more strongly tied back to local communities?

Yes, absolutely. After all, the economic situation resulting from the pandemic, and which will continue to do so, has already led to a massive increase in applications from local students. For the University of Melbourne, which is at the top of the hierarchy, this means a number of applicants that far exceeds our places. At the same time, the government is demanding that students pay a greater share of the cost of education, and the pressure on them is growing. It is very difficult to predict what will happen to our universities in the future, even the most elite ones.

Let's think a little more about the impact of the pandemic, on a global scale. In your podcast you recently had a very interesting discussion on this topic with the two international law experts Michael Fahkri and Luis Eslava, with special emphasis on Fahkri's role as UN Special Rapporteur on Food Security. If we look at the global impact of the pandemic, according to one conclusion of the discussion, it becomes clear that many long-standing inequalities have taken on sharper contours in recent months.

Yes, that's right. That observation has been made by many people by now. What is interesting is: In a rich country like Australia, it seemed for a moment that there might be a possibility of a reconfiguration of some of the neoliberal beliefs that shape our politics. Unemployment benefits were increased, social benefits were supplemented. Suddenly all the discussion about which poor people deserved support and which did not – because everyone was affected by the pandemic – disappeared. Nevertheless, social inequality has worsened. When we think about basic social infrastructure in a global perspective, it becomes clear that countries with good public health systems have so far coped much better. Places with more equality have also achieved much better results. Some of my students in the Law & Development course come from the Indian province of Kerala, and they have written papers on the response to the pandemic in Kerala – it was very interesting because they managed to keep infection rates and deaths really low there, at least initially, by means of a very decentralised, so to speak "barefoot" health system. Equality seems to have played a major role in this. The degree of existing equality or inequality seems to be a real indicator of how countries are emerging from the pandemic. How the pandemic exposes inequality is shocking. When I teach online, of course I see the big difference between those who have a room where they can work well and those who work from their bedroom with a poor internet connection. Many students from overseas are lonely, they don't have jobs anymore because the hospitality industry has disappeared, where many of them were employed. So although on one level it is banal to describe life in the lockdown, in the pandemic, it reveals an enlightening microcosm of the global political economy in which so many things are so unevenly distributed.

Let's talk about the *Kolonialware*, the colonial commodity, which you originally wanted to write about at this point.

With the article on the history of soap that Jeremy Baskin and I wanted to write for you, we wanted to take up the fixation on hygiene in the pandemic – and think about what the history of soap can tell us about the history, competition and convergence between corporations and the state in the colonial era. How corporations became a kind of link between metropolis and colony, how the state and corporations were as much connected, through mass consumption and raw material extraction, with the "civilising mission" as the point of convergence. Just as this "civilising mission" justified colonisation, it also provided an opportunity for the expansion of consumer goods markets.

The advertising for Pears' soap is really interesting because it works, for example, with highly racist images of the arrival of bars of soap on tropical beaches. There is this very famous advertisement for Pears' Soap (now a Unilever product), which shows a man in military uniform washing his hands, and under the picture is written "the first step to lighten the white man's burden". Often in illustrations you only see this central part of the poster, but if you look at the whole ad, in the four corners around the circle you see a warship, a merchant ship, a missionary and then a ship carrying Pears' Soap. So we see the unity of military, trade, business and mission, all under the banner of the civilising mission that underpinned the commercial expansion. We chose the example of soap also because it combines the extraction of palm oil with the production of consumer goods markets in the North. In Victorian England, the rich were afraid of the newly-urbanised poor because they were dirty and potentially infectious. And they were also anxious to prevent the poor from being "infected" by dangerous political ideas. Thus the civilising mission at home in the metropolis was driven by the interpolation (interposition) of the working class-who were thus "exported" with their needs to the colonies, as it were, to justify mass extraction and the acquisition of markets. Similar patterns can be found in the French and German colonial projects of that period.

It is also interesting to see what work racist soap advertising did. The "savage" depicted in the Pears' ads offered the British working class the opportunity to distinguish themselves from someone who seemed even more "other". Thus, alongside the justification of colonial expansion, there was also an import of colonial racialisation into the heart of the Empire. There is a strong parallel here with the history of modernisation and its continuities in the development project of the 20th and 21st centuries. The congruence between the interests of the economy and those of the imperial state is very succinctly found in Frederick Lugard's *The Dual Mandate in British Tropical Africa* (1922), when it speaks of civilisation and commerce. Economy and state went hand in hand. And the historical examples show that the production of demand, of desires, has always taken place through the formation of a racialised "other".

The concentration on one object corresponds to a *turn to materiality*, which can be observed in many areas of legal scholarship now. Is this a methodical tool that you use more often?

In my own research I usually don't do this; I am an institutional thinker, interested in practices and institutions. But I often teach using a single commodity – in my course *Investment, Regulation and Development* I ask students to organise their thinking around the history of a single commodity – be it coffee, bananas, sugar, oil or water. This has proven to be an immensely effective educational strategy. In research, a material object can be a point of entry, a point of organisation which allows students to find a larger story. One could tell a world history with a plastic spoon. Because there was a moment when it seemed more logical, more economical to drill for oil and make a plastic spoon, to use it once and then throw it away, rather than to have someone wash a spoon, says something about the history of the 20th century. The orientation towards objects or – as with Sheila Jasanoff and others in *Science and Technology Studies* (STS) – towards a phenomenon or a group of people makes it possible to think about ideas, institutions and material forms and structures as a whole, to look at the ideal and the material at the same time.

Let's talk a little more about institutions and institutional structures. You have long been interested in the colonial, postcolonial and decolonial imprints of states and international organisations – and the role that the concept of "development" plays in them.

In my work I have described the history of the concept of development as a central narrative of the transition from the colonial to the postcolonial era. The concept of development arises from the "civilising mission", and in some ways it is this concept of development that prevented decolonisation from undermining the Euro-American world's claim to universality. It invited states to join an already existing project with a vocabulary of self-transformation that gave people the illusion of self-determination – but in reality prevented political decolonisation from becoming economic self-determination. Development paved the way for the transformation from liberal to neoliberal economic forms to prevail in the Global South. When people today speak of the neoliberal state in the Global North and of the things that are imposed on the people there, they are often talking about things that the people in the Global South have long since been expected to do through interventions by the international financial institutions, also in the name of "development". So, the South is still an experimental laboratory. It is here that ideas and concepts are tested to see which ones work, and from here they migrate back to the North.

What exactly do you have in mind? The European austerity politics of recent years?

Let us recall what happened after the Latin American debt crisis of the 1980s. The fragile political formations, which had been held together in a kind of grand bargain

between centralised forms of authority and very disparate population groups by instruments of public welfare (health care, education, cheap food), came under pressure from rigid austerity measures and conditionality requirements. The states were required to privatise, liberalise capital movements and abolish subsidies. The global financial crisis also brought these instruments back to Europe – neoliberal orthodoxies that had been developed in the South in the 1980s and early 1990s.

And, of course, the law played a central role in shaping these situations, and thus in redefining the state in relation to economic actors. How does a closer look at institutions and practices transform our image of the state, our understanding of law?

In my project *Invisible Leviathans*, I try to describe the relationship between corporations, states and international law in a long historical perspective. The metaphor of the *Invisible Leviathan* is intended to shed light on how the seemingly national units of individual corporations come together to form a kind of global form of the global corporation. In place of small people who are integrated into the body of the sovereign individual (in the image on the cover of Hobbes' book), national corporations will be united here in the organisational form of a global corporation – through international law. So what I want to trace historically is the way in which international law and its predecessors made this merger and the "migration" of corporations and states to the South possible. Normally we hear a story about the delegation of state authority to companies, and truisms like "trade follows the flag" – but in my argumentation it is exactly the opposite: the flag followed trade, and corporations were more like the "organic entities" Otto von Gierke described than the "fictitious entities" Friedrich Carl von Savigny described. I am trying to trace the nature of corporate forms and describe how in the 16th century the use of these forms of enterprise in overseas trade turned profit-making into the purpose of corporate forms. This is, historically and theoretically, an attempt to tell a long story not only about the conceptualisation of the corporation, but also about what corporations were and could do – from their beginnings, which probably preceded those of the state. The combination of law and the state in the early British positivists gave rise to the fiction of the corporation as a creature of the state – an idea that never corresponded to reality. It makes the real public authority exercised by corporations invisible. We attribute their power to an exogenous economic phenomenon, but we forget that a fictitious person without a legal norm in the background can neither have power nor exercise power.

Does such a pluralistic approach also change the concept of the state?

When I examine the transformations of the concept of corporation, I also try to follow the transformations of what is understood as international law. So I come from the *ius gentium*, the classic law of nations, which in my view was a more pluralistic law of encounter, to the idea of international law, as Jeremy Bentham calls interstate law in 1840 – and thus establishes a fixation on the state as the sole actor in international

law that had not existed before. I am thus trying to regain an idea, a concept of international law as *law of encounter*, which makes rival forms of association visible again, which encounter each other in the forms that this law makes possible and promotes.

In such colonial (and post-colonial) encounters, is the state ultimately also a kind of colonial commodity, a *Kolonialware*, with all the blurriness that this term implies?

There is an irony in this word. When I was originally invited to contribute to this theme, you translated the term *Kolonialware* as “colonial good” and then explained the different nuances of the German word. This alerted me that “Goods” in English means both commodities and goods, i.e. things that are good, and that both meanings coincide in the word *Kolonialware*. I also looked up the etymology of “good”: the origins of the word are very uncertain, and there is also a connection via the Indo-European roots to the word *gadh* – which means “to make booty” in Sanskrit. The *Kolonialware*as colonial commodity thus carries both virtue and marketability in itself, indeed it *is* virtue and commodity. When one speaks of the legal form of the state, then it is actually very appropriate to call it a *Kolonialware*. The double meaning helps us to understand a form that is both a commodity and a place where the colonial subject strives to achieve virtue.

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